

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2014-346-WS- ORDER NO. 2021-501

JULY 26, 2021

IN RE:	Application of Daufuskie Island Utility)	ORDER GRANTING
	Company, Incorporated for Approval of an)	MOTION TO STRIKE
	Increase for Water and Sewer Rates, Terms)	
	and Conditions)	

This matter comes before the Public Service Commission of South Carolina on the Revised Motion of the Office of Regulatory Staff to strike Paragraphs 11 through 17 of the Affidavit of John F. Guastella, which was attached as Exhibit A to the Company's Brief on Reparations and Surcharges dated May 17, 2021. Because of the reasons stated below, the Motion is granted. However, some history is in order.

On March 30, 2021, the Commission approved a Settlement Agreement and Further Procedure in the 2014 Daufuskie Island Utility Company, Inc. ("DIUC") rate matter in Commission Order No. 2021-132. As part of the Settlement Agreement, DIUC still seeks reparations of alleged shortfalls, to be recouped through a surcharge. DIUC's proposed plan would collect such shortfalls in revenues and return, along with interest to be collected over a specified period. DIUC also seeks reparations to recoup through a surcharge the credit/refund made in its January 2018 billing for the difference between the 88.5% increase and the 108.9% increase that had been in effect during the first appeal with interest accumulating until the surcharge becomes effective.

ORS and the Intervenors disagree with DIUC, for a number of stated reasons. However, the Settlement Agreement contains a procedure, whereby the Parties can brief the matter to the Commission for its further determination in this case. The Settlement Agreement provides for notice and a briefing schedule on this issue. The Parties agreed that these issues may be decided on their respective written submissions to the Commission.

As part of its written submission on the reparations-surcharge issue, DIUC attached an affidavit from John F. Guastella. Although the Office of Regulatory Staff first moved to strike the entire affidavit, it subsequently determined that it would only move to strike paragraphs 11 through 17 of the affidavit, agreeing with DIUC that certain aspects of the affidavit would assist the Commission in determining the proposed method of implementing reparations and the timing of billing surcharges, should such actions be approved by the Commission.

ORS argues that the Settlement Agreement only allows a limited introduction of additional evidence to the Commission. This view opposes the DIUC opinion, which allows much more unrestricted interpretation. ORS opines that the Settlement Agreement in Paragraph 8 (d) specifically allows for a limited evidentiary hearing only in the event and after the Commission's issuance of an order approving DIUC's method of reparations and timing of billing surcharges:

Should the Commission issue an Order approving **DIUC's proposed method of reparations and timing of billing surcharges**, DIUC shall submit the calculation of the amount of the surcharges to individual customers for review by ORS. If there is a dispute as to the amount of the surcharges and their implementation, the Parties agree to

proceed expeditiously to an evidentiary hearing to determine the appropriate amount of surcharges. (emphasis added).

See, ORS Reply to DUIC's Opposition to ORS Motion to Strike Affidavit of John F. Gustella, p. 2, quoting ¶8(d) of the Settlement Agreement.

Therefore, ORS argues that it is improper and inconsistent with the Settlement Agreement to introduce for Commission consideration new evidence on issues outside of those contemplated by the plain meaning of the Settlement Agreement language viewed in its entirety, which is how ORS views Paragraphs 11-17 of the Guastella affidavit. We agree, and also agree with the ORS position that these paragraphs exceed that necessary to explain the proposed method of implementing reparations and the timing of billing surcharges. These paragraphs discuss Mr. Guastella's opinion that the Commission's orders did not produce an accurate Return on Equity, and opine on the legality of the Commission's actions during prior hearings on the case.

DIUC asserts that characterizing the submission as a brief is too narrow, however, Order No. 2021-132 so characterizes it. The Guastella affidavit went beyond the matter before the Commission, which is reparations and surcharges. Accordingly, Paragraphs 11-17, which contain other matter, should be stricken as requested by ORS.

We make the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The Office of Regulatory Staff seeks to strike Paragraphs 11-17 of the Affidavit of John F. Guastella, which was attached as Exhibit A to the Company's Brief on Reparations and Surcharges dated May 17, 2021.

2. The Parties agreed and the Commission approved the method of adjudicating the question of reparations and surcharges, and this was by filing briefs with the Commission.

3. Paragraphs 11-17 of the Affidavit of John F. Guastella do not address reparations and surcharges, but attempt to introduce other evidence into the case, including opinion evidence of the effect of the Commission's decisions on DIUC's rate of return on equity.

CONCLUSIONS OF LAW

1. Paragraphs 11-17 of the Guastella Affidavit exceed the parameters of proper evidence in this briefing phase of the case.

2. The Settlement Agreement clearly limited the scope of submissions to the Commission to evidence concerning reparations and surcharges.

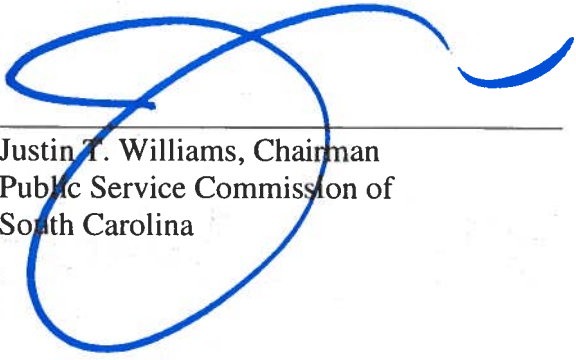
3. Paragraphs 11-17 should be stricken from the record of this case, since they addressed other subject matter.

ORDERING PARAGRAPHS

1. Paragraphs 11-17 of the Affidavit of John F. Guastella are stricken from the record of this case.

2. This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:



Justin T. Williams, Chairman
Public Service Commission of
South Carolina